

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

DMS IMAGING, INC.,

PLAINTIFF,

-AGAINST-

MEDICAL COACHES, INC.,
PHILLIPS AND TEMRO INDUSTRIES, INC. D/B/A
ZERO START, COLD WEATHER STARTING PRODUCTS,
JOHN DOE 1,
ELMWOOD SENSORS, LLC,

DEFENDANTS.

MEDICAL COACHES, INC

THIRD PARTY PLAINTIFF,

- AGAINST

ATLANTIC DETROIT DIESEL ALLISON, INC.
180 Route 17 South
Lodi, NJ 07644

VM MOTORI, INC.
1067 Centre Drive
Auburn Hills, MI 48326

THIRD PARTY DEFENDANTS.

STIPULATION OF DISMISSAL

COMES NOW Plaintiff, DMS Imaging, Inc. ("Plaintiff") and Defendants, Medical Coaches, Inc. ("Medical Coaches"), Phillips and Temro Industries, Inc. D/B/A Zero Start, Cold Weather Starting Products ("Phillips") and Elmwood Sensors, LLC ("Elmwood"), and Siemens Medical Solutions USA, Inc. ("Siemens"):

WHEREAS, on December 2, 2009, Plaintiff filed a Complaint against Siemens, Elmwood, Medical Coaches and Leviton Manufacturing Co., Inc. (“Leviton”);

WHEREAS, on February 12, 2010, Siemens filed an Answer to the Complaint containing a cross-claim against Medical Coaches;

WHEREAS, on February 12, 2010, Leviton filed an Answer to the Complaint that did not contain a cross-claim against Siemens;

WHEREAS, on March 18, 2010, Elmwood filed an Answer to the Complaint that contained a cross-claim against Siemens;

WHEREAS, on April 30, 2010, Medical Coaches filed an Amended Answer to the Complaint that contained a cross-claim against Siemens;

WHEREAS, on July 23, 2010, Plaintiff filed a Notice of Dismissal with prejudice of Siemens;

WHEREAS, on July 26, 2010, Magistrate Judge David E. Peebles entered an Order of Dismissal of Siemens;

WHEREAS, on August 18, 2010, Plaintiff filed a Notice of Dismissal with prejudice of Leviton;

WHEREAS, on September 14, 2010, Magistrate Judge David E. Peebles issued a Text Order clarifying that Plaintiff’s direct claim against Siemens was dismissed but that the cross-claims by and against Siemens remained pending;

WHEREAS, on October 14, 2010, Magistrate Judge David E. Peebles issued a Text Order extending the deadline for joinder and amendment until January 31, 2011 and

noting that Siemens remains in the action due to the cross-claim of Elmwood and Medical Coaches;

WHEREAS, on December 1, 2010, Magistrate Judge David E. Peebles issued a Stipulation of Dismissal and Order dismissing Leviton from the case with prejudice.

WHEREAS, on January 12, 2011, Plaintiff filed an Amended Complaint that added Phillips and dropped Siemens from the case;

WHEREAS, on January 24, 2011, Elmwood filed an Answer to the Amended Complaint and did not assert a cross-claims against Siemens;

WHEREAS, on January 28, 2011, Medical Coaches filed an Answer to the Amended Complaint and did not assert a cross-claim against Siemens;

WHEREAS, on February 4, 2011, Phillips filed an Answer to the Amended Complaint and did not assert a cross-claim against Siemens;

WHEREAS, there are currently no claims or cross-claims pending against Siemens; and

NOW THEREFORE, pursuant to Rule 41(a)(1), the parties hereby stipulate that plaintiff's claims against Siemens are dismissed with prejudice and that defendants' cross-claims against Siemens are dismissed without prejudice, with each party to bear its own costs and fees in this action. The parties further stipulate that any of Siemens' cross-claims are dismissed without prejudice, with each party to bear its own costs and fees in this action.

Dated: February 23, 2011

Respectfully Submitted,
s/Philip T. Carroll
Philip T. Carroll
Cozen O'Connor
333 W. Wacker Drive, Suite 1900
Chicago, IL 60601
Tel: (312) 382-3100
Fax: (312) 382-8910

s/ Mark D . Goris
Mark D. Goris (Bar No. 301980)
MITCHELL, GORIS & STOKES, LLC
5 Mill Street, P.O. Box 312
Cazenovia, NY 13035
(315) 655-3463 – Telephone
(315) 655-4544 – Facsimile
**ATTORNEYS FOR PLAINTIFF,
DMS IMAGING, INC.**

s/Thomas D. Keleher
Thomas D. Keleher
Suzanne M. Messer
Adam P. Mastroleo
Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, NY 13202
Telephone: 315-218-8000
Email: tkeleher@bsk.com;
**ATTORNEY FOR DEFENDANT
ELMWOOD SENSORS**

s/Michael J. Willett
Michael J. Willett
DAMON MOREY LLP
The Avant Building - Suite 1200
200 Delaware Avenue
Buffalo, New York 14202-2150
Telephone: 716-858-3797
Fax: 716-856-5537
Email: mwillett@damonmorey.com
**ATTORNEYS FOR DEFENDANT
MEDICAL COACHES**

IT IS SO ORDERED:



David E. Peebles
U.S. Magistrate Judge

Dated: February 23, 2011

s/Joseph Lipari

Joseph Lipari
Littleton Joyce Ughetta Park & Kelly, LLP.
39 Broadway

34th Floor
New York, NY 10006

Phone: 212.404.5777

Fax: 212.232.0088

Email: joseph.lipari@littletonjoyce.com

**ATTORNEY FOR DEFENDANT
SIEMENS MEDICAL SOLUTIONS USA,
INC.**

	<p><u>s/Christine Hanlon</u> Hanlon, Veloce Law Firm 94 Karner Road Suite 205 Albany, NY 12203 Telephone: 518-862-3080 Fax: 518-862-3081 Email: christine.hanlon@cna.com</p>
	<p>ATTORNEYS FOR DEFENDANT PHILLIPS AND TEMRO INDUSTRIES, INC. D/B/A ZERO START, COLD WEATHER STARTING PRODUCTS</p>